

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

EMANUEL DE JESUS SOSA-LOPEZ
ID# 56395-179
Federal Correctional Institution
P.O. BOX 5000
Oakdale, LA. 71463



Re: No. 12-CV-6649L

To: Office of the Clerk
U.S. District Courthouse Kenneth B. Keating
Fed. Building 100 State Street, Room 2120
Rochester, NY 14614

Dear Clerk:

Please find attached to this letter (Notice) copies of the letter's Petitioner sent to Mr. Michael Schiano while he was representing him during his trial proceedings.

This Notice is with the intent to expand the already information Petitioner filed in his petition under &2255.

For your kind assistance to this matter, thank you very much.

Respectfully Submitted,

Emanuel De Jesus Sosa-Lopez
ID# 56395-179
Federal Correctional Institution
P.O. BOX 5000
Oakdale, LA. 71463

Emanuel Sosa Lopez 2-27-13
Petitioner, Pro se

CERTIFICATE OF SERVICE

I, Emanuel De Jesus Sosa-Lopez, hereby certify under penalty of perjury that the foregoing "NOTICE", is true and correct to the best of my knowledge, understanding and belief. I further declare under penalty of perjury 28 U.S.C. §1746, that true and correct copies of said motion were addressed to:

Clerk, U.S. District Court
For the Western District of New York
Kenneth B. Keating
Federal Building 100 State Street, Room 2120
Rochester, NY 14614

Office of the U.S. Attorney
100 State Street Room 620
Rochester, NY 14614

Copies were deposited at the FCI mailbox on this 27 day of February of 2013.

Emanuel De Jesus Sosa-Lopez

TO: Michael P. Schiano, Esq

FROM: Emanuel Sosa-Lopez, #315407

Monroe County Jail

130 Plymouth Avenue South

Rochester, New York 14614-2213

DATE: 07 June 2011

RE: FEDERAL CASE

Dear Mr. Schiano;

I'm writing to you about my case. I didn't see or understand you why you didn't visit me or take my collect calls.

I pay you \$25,000. and you didn't write or file any motions that I know of. Mr. Schiano, I would like to see you.

Furthermore Mr. Schiano please see a motion to dismissal with prejudice, please check and file a dismissal with prejudice. This is with according to 18 U.S.C. section 3161 et seq, Speedy Trial Act. Or I'll have to file my pro se motion, also if you work to you can step down for been attorney, so I can get

the Federal Public Defender to take my case and furthermore Mr. Schiano, I would also like a "itemize statement" for the \$20,000.

I kindly await for your reply. I would like a reply within 20 twenty days. For a reply.

Very truly yours.

Emanuel Sosa Lopez

cc: file

Por medio de la presente y en
consentimiento de todas mis facultades mentales yo
con mi nombre de "Hector Barajas Luna" con fecha
de nacimiento del 01-25-63.

Doy la autorización al señor abogado con nombre
Michael P Schiano quien trabaja en mi caso
que le haga entrega del discovery, como tambien
de todos los papeles legales sobre mi caso, a la
señora "Milna Perez" con direccion en la
calle 125 st Paul st Apt 826 de Rochester, NY. 14604
De la misma manera le pido por favor se le de
a ella toda la informacion sobre mi caso y
todo lo relacionado con lo que conmigo esta
pasando.

Em. Héctor Barajas L

Sworn to before me this 14 day
of October 2008

Gloria J. Sands
Notary

NOTARY PUBLIC-STATE OF NEW YORK
GLORIA J. SANDS
NO. 015A6159539
Qualified in Yates County
Commission Expires January 16, 2015

Michael P. Schiano
315 Wilder Building
One East Main Street
Rochester NY 14614

12-14-10

Once again address to you with very much respect, I would not want to disrespect you in any way possible. Sending my letters to the judge, explaining what you sir have been doing with me, and with very much respect I address you, you've been fully paid for your services is for you to fight for me and this case, it's not for you to help the D.A.. I believe with your profession and your professional ethics, that you sir as well are very educated. As well that I have paid, I have the right to call you and continue answering my calls, as well for you to come make a visit on your behalf, and as well I have the right to ask for all of my legal papers about my case and my discovery package.

In the mean time I'm going to write to the judge explaining everything you have done for me, and one to the supreme court of justice. I ask of you to get a date for my trial or sentences as soon as possible. Or I will have to address to the lawyers associations or grievance comite to explain the issue I have with you sir.

And with very much respect I address everything that I'll write to the judge as well as for the lawyers associations, you sir are not giving me any more options to do just to write to them all and you got paid for so you can defend me on my case, not for you to cause me damage I'll be waiting for your visit as soon as possible.

Thank you sir.

Emanuel Sosa Lopez

Hon. Judge David G. Zarinore
100 State Street.
Rochester N.Y. 14614

12-14-11

With very much respect I address to you once again sir, on behalf of this letter to inform you sir, that I really didn't know judge that I can communicate with you to inform you about my situation, and what's been happening with me and what was Michael Schiano doing. There's a friend that told me I can write directly to you and inform you about my situation, that's why I'm writing and explaining with a few evidence of paper that I have of a few letters that I have sent asking Mr. Schiano for my legal papers about my case and my discovery package, which judge till this day I haven't recieved absolutely nothing.

I asked him before he took on my case if he had the time for the job and able to defend me and fight my case in which sir he said he would be able too do so, and the only thing he has really done is damage me and as well my family, for charging all of his services, and has never done anything for me, this is why sir since 16 months ago I asked him to return my money that he was paid for and has never wanted to do so, on the abuse of my trust the same has happen with Rodolph Leone that as well did the same taking money from my children.

The more thing I send to you sir to tell you, that during all this time lawyer schiano never brought an interpreter, who translated for me, was a friend that has been here with me here during my incarceration, another thing is that how is it possible that it took him 7 months to receive my case information, knowing that lawyer vacca is in the same building where he has his office, if he continues to represent me sir is because I don't have the money to pay a lawyer his wages, and because he has'nt want to return my money as well as lawyer lepore, and if I'm telling you this sir is because my lawyer has been lying to me and manipulating me and my family only causing damage and stress.

As well I ask please with very much respect I ask to get an interpreter to translate this letter for you that I personally wrote to my lawyer so you can know the truth about everything that's been going on and what's been happening. He has never worked my case only cause damage and that's why judge sir ask my god and tell him and you sir to consider please, and give me my sentence. And if I send you any copy of any motions in my case is therefor he has'nt put my sir. That's why sir I'm going to send a letter to the supreme court of justice explaining my case and what's been happening and what has happen are as well I wrote to the Grevarce Committee...

Notary Public in and for the State of New York
 My Comm. Expires March 28, 2011

130 S. Plymouth Av.
Rochester, NY. 14614

Michael Schiano
315 Wilder Build.
One East. Main St.
Rochester, NY. 14614

Dear Mr. Schiano,

in virtue of a
contract of employment between
me and you; and by being me
the paying party. I want you
to write me a résumé of all
your doings in my case. Everything
that you have done. I also want
you to hand me a copie of the
plea agreement with the gov.

If there is still an agreement
I demand a copie and If it
don't go anymore I want you
to write down a plan of
defense and precent it to me
as soon as posible.

A visit will be appropiate.
Thank you.

Sworn before this 1st Att.
Day of March 2011

~~Norrose J. DeMarco~~ Emanuel Sosa Lopez

Norrose J. DeMarco
Notary Public, State of New York
Reg. # 01DE5002228
County of Monroe
Commission Expires March 23, 2011

Emanuel Sosa Lopez

Emanuel Sosa Lopez
Monroe County Jail
130 Plymouth Avenue South
Rochester, New York 14614

Attorney for Pro Se

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff.

v.

RAMON GARCIA, et al.
(EMANUEL SOSA LOPEZ)
Defendant

CASE NO: 6:06-cr-06198-DGL-MWP

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS WITH PREJUDICE
FOR VIOLATION OF 18 U.S.C. 3161

Date: _____, 20__

Time: _____ a.m. / p.m.

Court: The Hon. Marion W. Paegson

INTRODUCTION

Emanuel Sosa-Lopez, hereby requests that the Court dismiss with prejudice the indictment pending against him for violation of the Speedy Trial Act. Almost (4) four to (5) five years have run the Speedy Trial clock that were not excluded, and dismissal is therefore required by law. The dismissal should be with prejudice

defendant has suffered as a result of the lengthy proceedings against him, proceeding that began in federal court and have already been underway for over (4) four to (5) five years. A dismissal with prejudice would also best serve the interests of the Administration of the Speedy Trial Act and interests of justice.

PROCEDURAL BACKGROUND

1. On November 07, 2006 a SEALED SUPEREDUCING INDICTMENT was filed on Ramon Garcia and Emanuel De Jesus Sosa Lopez Entered: November 11, 2006.

2. On November 28, 2006, Emanuel De Jesus Sosa Lopez was arrested in the Southern District of Texas by U.S. Marshal Services. Filed on November 15, 2006 and Entered November 28, 2007.

3. On the date of arrest Emanuel De Jesus Sosa Lopez initial appearance in Southern District Court for Texas on Criminal Docket Number: 6:06-cr-06198-DGL-MWP.

4. On numerous dates and time defendant Emanuel De Jesus Sosa Lopez appear in U.S. District Court for the Western District for New York with his court-appointed attorney James P. Vacca, Esq.

5. Defendant appear on numerous matter for the court Orders and Oral Arguments and Motion Hearing and Status Conference and Adjournment for Speedy Trial Act. with court appointed attorney James P. Vacca, Esq.

6. On November 24, 2006, defendant appeared with a new attorney Michael P. Schiano, Esq. to inform the court of new attorney.

7. On numerous dates from November 24, 2006, defendant appeared in court again with new attorney Michael P. Schiano, Esq. for numerous court matters.

8. On numerous court dates defendant kept informing his first attorney James P. Vacca, Esq. and his new attorney Michael P. Schiano, Esq., wishes to go to TRIAL.

9. Defendant again keep on appearing for Orders and Oral Arguments and Motion Hearing and Status Conference and Adjournment for Speedy Trial Act. (SEE ATTACHMENT EXHIBIT A).

ARGUMENT

1. MORE THAN 70 DAYS OF UNEXCELLED TIME HAVE ELAPSED SINCE EMANUEL DE JESUS SOSA-LOPEZ ARRAIGNMENT

Speedy Trial Act, 18 U.S.C. 3161, provides that:

In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or

indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer the court in which such charge is pending, whichever date last occurs.

18 U.S.C. §101 (E)(1) Time may be excluded from the 70 day period between arraignment and trial for specific periods of delay described in 18 U.S.C. §1011

If there has been a violation of the Speedy Trial Act, dismissal of the indictment is required. As the United States Supreme Court noted in United States v. Taylor, 487 U.S. 326, 332 (1988). The statute admits no ambiguity in its requirement that when such a violation has been demonstrated, the information or indictment shall be dismissed on the defendant. A district court's application of the Speedy Trial Act is reviewed de novo. United States v. Hall, 181 F.3d 1057, 1061 (9th Cir. 1999).

Emanuel De Jesus Sosa-Lopez was arraigned in federal court in the above-captioned case in Southern District Court for the United States District for Texas on November 21, 2007, then in the Western District Court for the United States District for New York on or about December of 2007. As of the date of the

filing of this motion (4) four to (5) five years have passed since the year of 2006 of arraignment. More than a 150 of those days were not excluded under any of the grounds set out in 18 U.S.C. 3161 (h). Therefore the indictment must be dismissed with prejudice.

The entire (4) four to (5) five years period violated Defendant Emanuel De Jesus Sosa-Lopez Speedy Trial clock even with the excluded dates under 18 U.S.C. 3161 (h). In each stipulation the Court ordered that time be excluded based upon among reasons, the complexity of the case pursuant to 18 U.S.C. 3161 (H)(8)(B)(iii). Each of the Courts finding of complexity set out a specific period that was covered by the finding, as it required under Ninth Circuit law. See United States v. Clymer, 25 F.3d 824, 827 (9th Cir. 1994) (finding of complexity to justify exclusions of time under Speedy Trial Act must be specifically limited in time at); United States v. Jordan, 915 F.2d 563, 565-66 (9th Cir. 1990) (accord). A finding of complexity only excludes from Speedy Trial Act calculations that time covered by the exclusion; it does not operate to stop the Speedy Trial clock indefinitely or at any time other than covered by the specific exclusion. See Clymer, 25 F.3d at 829 (Speedy Trial Act could be seriously distorted if a district court were able to make a single, open-ended, ends of justice determination early in a case which would

exempt the entire case from the requirements of the Speedy Trial Act altogether.). (Quoting Jordan, 915 F.2d at 525-26).

While the complexity exclusions were limited in time, as required by Ninth Circuit law, they were not accompanied by any justification for the finding of complexity. The Speedy Trial Act.

A imposes strict specificity requirements for ends of justice exception. At United States v. Lynn, 123 F.3d 1213, 1216 (9th Cir. 1997). Any exclusion pursuant to the ends of justice must be a justified (on the record) with reference to the facts as of the time the delay is ordered. At United States v. Jordan, 915 F.2d 523, 525-26 (9th Cir. 1990). The court must state the specific factual circumstances at sufficient to justify the exclusion. United States v. Martin, 712 F.2d 812, 814 (9th Cir. 1984). With regard to each of these orders, there was no explanation of why the case was complex; the orders simply asserted that the case was complex.

Nonetheless, the entire period cannot be excluded on this ground. It would be necessary to determine at a hearing which of these days were properly excluded. Until that time, defendant reserves argument on how much time should be credited on how much time be credited to the Speedy Trial clock during the period covered by stipulations.

In United States v. Hoslett, 996 F.2d 646, 657 (9th Cir. 1993) our review of the relevant statutory and legislative materials

persuades us that the Speedy Trial Act does not permit the exclusion of all pretrial motion preparation time as a routine matter.

Only where there is a specific request for more pretrial motion preparation time than is routinely established by district court in this standard scheduling order may such preparation time excluded, and filing deadlines set by district judge do not qualify as "express designations" of excludable pretrial motion preparation time.

Once a hearing has been held on a motion and the parties have submitted any post-hearing briefs requested by the court 18 U.S.C. 3161(h)(1)(W) limits the excluded period to (30) thirty days. See Henderson v. United States, 476 U.S. 321, 329 (1986) (noting that district courts cannot use 18 U.S.C. 3161(h)(1)(F) to bypass the (30) day limit of 18 U.S.C. 3161(h)(1)(W), but additional time excludable during which the court remains unable to rule because it is awaiting the submission by counsel of additional materials).

Therefore, the Speedy Trial Act under 18 U.S.C. 3161(h) been violated, the case must be dismissed with prejudice.

II. THE COURT SHOULD DISMISS THE CHARGES WITH PREJUDICE

The Speedy Trial Act remedy provision, 18 U.S.C. 3162 (a)(2) instructs, in relevant parts:

If a defendant is not brought to trial within the time required by 18 U.S.C. section 3161(c) as extended by 18 U.S.C. 3161(h), the information or indictment shall be dismissed on motion of the defendant..... In determining whether to dismiss the case with or without prejudice, the court shall consider, circumstances of the case which led to the dismissal; and the impact of a reprosecution, on the administration of this chapter and on the administration of justice.

The decision to dismiss with or without prejudice is left to the guided discretion of the district court. United States v. Engstrom, 7 F.3d 1423, 1427 (9th Cir. 1993). Neither remedy is given priority. Taylor, 487 U.S. at 334. The district court must consider at least the three factors specified in 18 U.S.C. 3162(a)(2) when exercising its discretion. Id. at 333. The district court's factual findings are reviewed for clear error, including the court's finding in support of a decision to dismiss with or without prejudice. United States v. Montero-Carmargo, 177 F.3d 113, 1119 (9th Cir. 1999); Taylor, 487 U.S. at 336.

Considering the three factors set out in 18 U.S.C. 3162(a)(2) and other factors relevant to the case, the court should dismiss the charges against Emanuel De Jesus Sora-Copez with prejudice. The circumstances of the case which led to

dismissal, the seriousness of the delay in getting this case to trial, and the impact of a reprosecution on the administration of justice all militate in favor of dismissal with prejudice. Nevertheless, seriousness of the offense must be considered in light of the other factors contained in 18 U.S.C. § 3162(b)(2). As the Ninth Circuit noted in United States v. Clymer, 25 F.3d 824 (9th Cir. 1994), the seriousness of the offense (in Clymer, conspiracy to distribute). A must be weighed against the seriousness of the delay, as well as the rest of the other two statutory factors at 25 F.3d at 821 (citations omitted).

Regarding the second factor, the court should consider the sheer length of the period involved, a factor that weighs heavily in favor of dismissal with prejudice. Defendant has been under federal indictment for more than 450 days. Defendant has been defending himself on this case for over (4) four to (5) five years. In the federal prosecution, the amount of time not excluded under the Speedy Trial Act, taking a very conservative view of the Speedy Trial clock. In Clymer, when faced with a defendant who had been under indictment for nearly a year and a half, roughly five months of which was not excludable under the Act, a sheer length of the period involved weighed heavily in favor of a dismissal with prejudice, at 25 F.3d at 821-2, quoting United States v.

Stoughton, 791 F.2d 17, 21 (2d Cir. 1986). The Ninth Circuit held that a delay of five months strongly implicates the serious concerns articulated by Justice White in his concurring opinion in Baker v. Wingo, 407 U.S. 514 (1972), wrote:

[I]nordinate delay between public charge and trial ... wholly aside from possible prejudice to a defense on the merits, may seriously interfere with the defendant's liberty, whether he is free on bail or not and ... may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends.

407 U.S. at 537 (1972) (White, J., concurring) (quoting United States v. Marion, 404 U.S. 307, 320 (1971)). This language was quoted approving by a majority of the Supreme Court in Taylor, 487 U.S. at 340-41.

Defendant has experienced all these forms of prejudice for (4) four to (5) five years. He then spent over (4) four to (5) five years in detention at Monroe County Jail. He spent his life savings defending himself in the federal court, now his family has now expended substantial funds to support him during case and to represent him, defendant has suffered from the

substantial stigma that attaches to persons charged with these offenses. He and his family have experienced great anxiety as he has defended himself during these many years.

The Supreme Court also noted in Taylor that the longer the delay, the greater the presumptive or actual prejudice to the defendant, in terms of his ability to prepare for trial or the restrictions on his liberty. In Taylor, 487 U.S. at 340. The presumptive prejudice to defendant is great, because the delays violated defendant's Speedy Trial Act.

Certainly, Congress did not envision this situation when it allotted only 30 days for the court to consider a motion. See 18 U.S.C. 3161(b)(1)(C). An order dismissing this case with prejudice would send a clear signal that the government cannot expect the Court to rule on motions within the Speedy Trial Act.

The Supreme Court noted in Taylor, A [17E] is self-evident that dismissal with prejudice always sends a stronger message than dismissal without prejudice, and is more likely to induce salutary changes in procedures, reducing pretrial delays at 487 U.S. at 342.

Even had the government not directly contributed to the delay, its inaction in prosecuting the case and inattentiveness to the Speedy Trial clock warrant dismissal with prejudice. The purpose of the Speedy Trial Act is not only to protect a

defendant's constitutional right to a speedy trial, but also to serve the public interest in bringing prompt criminal proceeding. United States v. Saltzman, 984 F.2d 1087, 1090 (10th Cir. 1993) (citing United States v. Noone, 913 F.2d 28 (1st Cir. 1990)). Whenever the "government -- for whatever reasons -- falls short of meeting the Act's requirements, the administration of justice is adversely affected." United States v. Ramirez, 973 F.2d 36, 39 (1st Cir. 1992) (quoting United States v. Hastings, 847 F.2d 920, 926 (1st Cir. 1988)) (finding that the legislative history of the Speedy Trial Act demonstrates its importance in advancing both the public and private interests in fair and expeditious trial of criminal cases)) While not all violations of the Speedy Trial Act warrant a dismissal with prejudice, the purposes of the Act would be thwarted if the government and the courts did not adjust their day-to-day procedures to comply with its requirements. See Clymer, 25 F.3d at 832. Dismissal with prejudice in this case would alert the government to exercise greater vigilance in monitoring the Speedy Trial clock. The government request to continue the Court, when the prosecutor claimed, demonstrates its lack of concern for speedy prosecution of cases.

Finally, the unique history of this case also supports dismissal with prejudice. However, it is proper for the court

to consider this delay when considering the effect of a dismissal on the administration of justice.

A dismissal with prejudice in this case would help ensure that no one else is subjected to (4) four to (5) five delay.

CONCLUSION

For the foregoing reasons, Emanuel De Jesus Sosa-Lopez respectfully requests that the court dismiss the above-captioned indictment with prejudice due to violation of the Speedy Trial Act, 18 U.S.C. 3161 et seq.

Dated: _____, 20____

Respectfully submitted,

Emanuel De Jesus Sosa-Lopez
Attorney for defendant, Pro se

Con mucho respeto me dirijo ya otra vez más con usted
 por medio de esta carta para decirle ya a usted que
 realmente señor juez, que yo no sabía que me podía
 comunicar yo con usted para decirle todo lo que
 conmigo estaba pasando, y se me estaba haciendo
 a mí, por el abogado Michael Schiano. Pero se
 me dijo por un compañero aquí que si lo podía
 yo hacer, y es por eso que ahora le mando yo
 decir todo a usted o al menos una parte, y
 se lo mando decir con evidencia que son unas
 pocas copias de muchas de las cartas q' yo le
 mando a el pidiéndole siempre mis papeles
 sobre mi caso y mi discovery paguéllele, la cosa
 señor juez esta es una de las que no se me la entregó
 absolutamente nada. Yo desde antes de que el tomara
 mi caso yo le pregunte a el que si tenía el
 tiempo para trabajar en el, y poder defender
 y pelear en mi caso, lo cual señor me dijo el que
 si lo haría, y lo unico que a logrado es hacerme
 mucho daño a mí, como tambien a mi familia
 cobrándoles todos sus servicios, y nunca ha hecho
 ni nada por mí, es por eso señor que yo hace
 16 meses que le pedi que me hiciera entrega
 del dinero que se le pago y nunca quiso
 hacerlo, y como el abuso de mi confianza
 así tambien lo hizo el abogado Rodolfo Lepore
 quien tambien abuso de mí, quitándome el
 dinero de mis hijos.

Otra cosa mas que le mando yo a usted decir, que durante todo el tiempo el abogado Sr. Vaca nunca me hizo un interprete, si no quien me interpretaba a mi era uno de mis compañeros, que se encuentran aqui mismo en prision, otra de las cosas es que como es posible que aiga el dorado 7 meses para recibir los papeles sobre mi caso, siendo que el abogado Jim Vaca esta en el mismo edificio donde tambien el tiene su oficina, y si el me sigue representando todavia señor, es porque yo no tengo el dinero para pagar los honorarios de otro abogado mas, porque el nunca me quiso hacer entrega de mi dinero, como tampoco el abogado Rodolfo Lopez. Y si le mando decir toda esta señal es porque mi abogado solo me ha mentado y me ha engañado a mi, asi mismo solo me ha causado mucho daño a mi, como tambien a toda mi familia. Asi tambien le pido por favor y con mucho respeto que un interprete le traduzca la carta que yo personalmente le mando en español al abogado, para que usted sepa la verdad sobre de todas las cosas que yo le mando decir a el y de lo que el esta haciendo conmigo.

Porque nunca trabajo mi caso, solo me cause mucho daño, es por eso señor juez que me encomiendo yo a Tui Dios, y le pido yo a usted me considere por favor. Y se me de este mas Tui Santuccion.

luciones que el corte en mi caso, es porque
yo me fio al abogado señor.

Es por eso mismo señor juez, que le voy a mandar
una carta a la suprema corte de justicia
~~por~~ explicandole yo todo mi caso, diciendole
todo lo que se me esta haciendo, y todo
lo que se me ha hecho. Si tambien le escribire
otra carta a Grievance committee

Mil gracias por su tiempo.

Reciba bendiciones para usted, y tambien
para toda su adorable familia.

Le deseo una muy feliz Navidad
en compañía de todos sus queridos
y un Año lo más nuevo

Emanuel Sosa Lopez